

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

November 13, 2013 at 10:00 a.m.

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1. [13-30309](#)-C-13 MICHAEL/ARLENE DISESSA ORDER TO SHOW CAUSE - FAILURE
 Richard L. Jare TO PAY FEES
 10-9-13 [[28](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor not paying one or more installments according to the schedule specified in the Order granting Debtor leave to pay the filing and administrative fees in installments. The amount of \$70.00, due on 10/04/13, has not been paid. The court's docket reflects that the payment remains due.

The court's tentative decision is to sustain the Order to Show Cause. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor has not paid a \$70.00 filing fee installment payment, due October 4, 2013. The court entered a order on October 23, 2013 confirming Debtors' plan. If the court sustains the order to show cause, Debtors will not be eligible for a discharge at the completion of their plan.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented
to the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Order to Show Cause is
sustained.

November 13, 2013 at 10:00 a.m.

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 30, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case because Debtors are causing unreasonable delay that is prejudicial to creditors. The case was filed on February 21, 2013 and Debtor has yet to confirm a plan. Debtor's Motion to Confirm a proposed amended plan was withdrawn on September 6, 2013 and Debtor has not filed an amended plan or set a confirmation hearing date. Unreasonable delay that is prejudicial to creditors is sufficient cause for dismissal pursuant to 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

November 13, 2013 at 10:00 a.m.

3. [13-31813](#)-C-13 THOMAS DEARAGONAISE AND MOTION TO DISMISS CASE
TSB-1 EMANUELA FROMENT-DEARAGONAISE 9-24-13 [[14](#)]
Stephen M. Reynolds

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 24, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss and transfer the case to the District Court for the District of Colorado. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtors incorrectly filed their case in the Eastern District. According to the petition, Debtors' street address is 9025 East Girard, Denver, Colorado. Counties that fall within each District in California are set forth in 28 U.S.C. §§ 84, & 1408.

Debtors' Opposition

Debtors respond by arguing that pursuant to 11 U.S.C. § 1408, a case under Title 11 may be commenced in the District where a Debtor's principle assets are located and Debtors' most important asset is the right to receive a Cal PERS pension earned from employment with the California Department of Corrections. The purpose of the venue is convenience of the parties in interest. Furthermore, the IRS dealt with Debtors previously as California Debtors and the California Franchise Tax Board is better served being heard in California than in Colorado.

Discussion

Pursuant to 28 U.S.C. § 84, California is divided into four judicial districts known as the Northern, Eastern, Central, and Southern Districts of California. The Eastern District of California is comprised of thirty-four different counties with court held at Fresno, Redding, and Sacramento.

Pursuant to 28 U.S.C. § 1408(1), a case under title 11 may be commenced in the district court for the district in which the domicile, residence, principal place of business in the United States, or principal assets in the United States of the person that is the subject of such a case have been located for the one hundred and eighty days immediately preceding the

commencement of the case.

Debtors currently reside in Denver, Colorado, but seek to have their Chapter 13 bankruptcy case heard in Sacramento in the Eastern District of California. Debtors' assets consist of the following:

- (1.) A partially developed lot located at 48 Arrowwood Drive, Allens Park, Colorado valued at \$85,000.00
- (2.) Checking and savings accounts valued at \$3,000.00
- (3.) Various household goods, clothing, recreational equipment, and jewelry valued at \$8,300.00.
- (4.) Interest in Cal PERS pension, valued at \$0.00
- (5.) 100% stock ownership of True Security, Inc., valued at \$100.00
- (6.) A 1986 Chevy Truck, 2003 Toyota Matrix, and 29 foot trailer, cumulatively valued at \$20,700.00.

Debtors' Schedule C includes exemptions of personal property taken pursuant to Colorado law.

Debtors' Schedule D reflects the secured debt of Linda Pickus for the amount of \$58,000.00 related to the purchase of the partially developed lot. Schedule E contains unsecured debt owed to the Internal Revenue Service, California Franchise Tax Board, and numerous general consumer creditors.

The court is not persuaded that Debtors' bankruptcy case is properly located in the Eastern District of California. Debtors argue that the Cal PERS pension is the largest asset in this case; however, while the pension may provide funding for a Chapter 13 Plan it is not an asset that will be modified or affected by the reorganization of Debtors' debt through the course of their Chapter 13 plan. The assets of Debtor mostly likely to be affected by their bankruptcy consist of their real property and personal property, all located in Colorado.

Furthermore, Debtors have been residents in Colorado for at least six months. Debtors filed the second of three bankruptcy petitions on May 10, 2013 and listed 9025 East Girard, Denver, Colorado as their address. November 10, 2013 marks six months from the date of the second filing, placing Debtors beyond the 180 day time framedetermining appropriate venue under 28 U.S.C. § 1480(1). Debtors also seeks to apply Colorado state exemption in their bankruptcy case. Adjudication of Debtors' case in Colorado is more appropriate and would likely be more efficient.

Therefore, the court's decision is to deny the Motion to Dismiss without prejudice and transfer the Debtors' case to the more appropriate venue, the U.S. District Court for the District of Colorado.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

IT IS FURTHER ORDERED that the Debtor's Chapter 13 case be transferred to the District Court for the District of Colorado.

4. [13-21814](#)-C-13 ALAN/KANDI BARBER MOTION TO DISMISS CASE
TSB-1 Mark W. Briden 10-16-13 [[55](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 16, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case for the following reasons:

1. Debtor is \$250.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$250.00 is due on October 25, 2013. Debtor has paid \$1,000.00 into the plan to date.
2. Debtors' Motion to Confirm was heard and denied by the court at a hearing held on August 27, 2013 (Dkt. 52). No subsequent amended plan or Motion to Confirm has been filed.

Debtors' Opposition

Debtors' case was converted from Chapter 7 to Chapter 13 after an increase in the value of their principal residence resulted in substantial non-exempt equity in vehicles owned by Debtors. After conversion, Debtor Mr. Barber lost his job and has been collecting unemployment. This situation has made is

impossible for Debtor's to propose a feasible Plan.

Debtors believe that Mr. Barber will be employed before November 13, 2013 with compensation sufficient to propose a feasible Chapter 13 plan. If Debtor Mr. Barber is not employed by the time of the hearing, Debtors will either allow the case to be dismissed or re-converted to Chapter 7.

Discussion

As it stands, Debtors cannot propose a feasible Chapter 13 plan and Debtors are delinquent in plan payments; therefore, the court's tentative decision is to dismiss the case. However, if, at the hearing on the Motion to Dismiss, Debtors present evidence of employment demonstrating an ability to propose a feasible plan, the court is amenable to denying the Motion to Dismiss. Alternatively, if Debtor cannot find employment, the court is amenable to discussing the option of re-converting to Chapter 7, at the hearing on the Motion.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case because Debtor is delinquent \$3,926.62 in plan payments to the Trustee to date and the next scheduled payment of \$1,963.31 is due on November 25, 2013. Debtor has paid \$0.00 into the plan to date.

Pursuant to 11 U.S.C. § 1307(c), cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.

6. [13-31530](#)-C-13 SHOMARI/MONIQUE TURNER ORDER TO SHOW CAUSE - FAILURE
C. Anthony Hughes TO PAY FEES
10-8-13 [[20](#)]

Final Ruling: The court issued an order to show cause based on Debtor not paying one or more installments according to the schedule specified in the Order granting Debtor leave to pay the filing and administrative fees in installments. The amount of \$70.00, due on 10/03/13, has not been paid.

The Order to Show Cause is discharged. No appearance required. The court makes the following findings of fact and conclusions of law:

The court's docket reflects that the installment fee for October and November 2013 was paid and the next Installment Payment of \$70.00 is due on December 2, 2013. The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Order to Show Cause having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Order to Show Cause
is discharged, no sanctions are ordered, and
the case shall proceed.

7. [13-32432](#)-C-13 JEFFREY/RACHELLE FILER MOTION TO DISMISS CASE
TSB-2 Dale A. Orthner 10-30-13 [[26](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case before the opposing party served opposition, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing, the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy
Case having been filed by the Chapter 13
Trustee, the Chapter 13 Trustee having
withdrawn its motion to dismiss pursuant to
Federal Rules of Civil Procedure

41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

8. [13-29634](#)-C-13 JAMES/EVELYN CRAINE MOTION TO DISMISS CASE
TSB-1 Peter G. Macaluso 10-16-13 [[38](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

9. [13-30535](#)-C-13 INGAR ROSS
[Thru #10](#) Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-15-13 [[31](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor not paying one or more installments according to the schedule specified in the Order granting Debtor leave to pay the filing and administrative fees in installments. The amount of \$70.00, due on 10/08/13, has not been paid. The court's docket reflects that the payment remains due.

The court's tentative decision is to sustain the Order to Show Cause. Oral argument may be presented by debtor at the scheduled hearing, where debtor may address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor has not paid a \$70.00 filing fee installment payment, due October 8, 2013. Therefore, the order to show cause is sustained and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented
to the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Order to Show Cause is
sustained.

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (Pro Se) and Office of the United States Trustee on October 24, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtor's Bankruptcy Case for the following reasons:

1. Debtor did not appear at the First Meeting of Creditors held on September 19, 2013 or the continued meeting held October 17, 2013. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$441.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$441.00 is due on October 25, 2013. Debtor has paid \$0.00 into the plan to date.
3. Debtor did not provide Trustee with a tax transcript or copy of the Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

11. [13-23437](#)-C-13 MARK/LAURIE CARMICHAEL MOTION TO DISMISS CASE
TSB-1 David M. Brady 10-30-13 [[59](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 30, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case for the following reasons:

1. Debtors are \$506.62 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$253.31 is due on November 25, 2013. Debtor has paid \$0.00 into the plan to date.
2. Debtors did not provide Trustee with a tax transcript or copy of their Federal Income Tax return with attachments for the

most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).

3. Debtors did not provide Trustee with Employer Payment Advices received 60 days prior to filing, as required under 11 U.S.C. § 521(a) (1) (B) (iv).

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (Pro Se) and Office of the United States Trustee on October 24, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case for the following reasons:

1. Debtor is \$100.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$100.00 is due on October 25, 2013. Debtor has paid \$0.00 into the plan to date.
2. Debtor's plan was filed on September 19, 2013; however, Debtor has not caused the plan to be served on all interested parties and no Motion to Confirm the plan is pending. A confirmation hearing is normally held not later than 45 days following the first meeting of creditors unless the court determines it should be held sooner under 11 U.S.C. § 1324. The first meeting of creditors was held and concluded on October 17, 2013. The Trustee will object to the plan filed on September 19, 2013.
3. The current case is Debtor's fourth case filed in a series since January 4, 2010. Debtor's case history is as follows:
 - a. 10-20028 filed 01/04/10, dismissed 04/09/10 for not meeting conditions of court order.
 - b. 11-29821 filed 04/21/11, dismissed 08/03/11 for not properly setting the motion to confirm the plan for hearing.

- c. 12-33723 filed 07/26/12, dismissed 02/21/13 for not servicing a plan on parties of interest, wrong plan, delinquency, lack of documentation, no Class 1 checklist, not providing proof of social security number.

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

13. [13-31439](#)-C-13 DALVON BOLDS
Thru #14 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-4-13 [[21](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor not paying one or more installments according to the schedule specified in the Order granting Debtor leave to pay the filing and administrative fees in installments. The amount of \$70.00, due on 09/30/13, has not been paid. The court's docket reflects that the payment remains due.

The court's tentative decision is to sustain the Order to Show Cause. Oral argument may be presented by debtor at the scheduled hearing, where debtor may address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The court's docket reflects that the \$70.00 installment payment due September 30, 2013 remains unpaid. Furthermore, the court issued a second order to show cause on November 4, 2013 based on Debtor not making another \$70.00 installment payment due on October 29, 2013.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented
to the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Order to Show Cause is
sustained and the case is dismissed.

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (Pro Se) and Office of the United States Trustee on October 24, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case for the following reasons:

1. Debtor is \$219.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$219.00 is due on October 25, 2013. Debtor has paid \$0.00 into the plan to date.
2. Debtor filed an amended plan on October 17, 2013, but it has not been set for confirmation. The Trustee intends on object to the plan.
3. Under 11 U.S.C. § 1325(b), the plan is not Debtors' best effort. At the First Meeting of Creditors Debtor stated he is no longer employed at Monument Security and is now employed by Cache Creek and earns more than the \$1,500.00 on his current Schedule I.
4. The plan does not pay unsecured creditors what they would receive in the event of a chapter 7 liquidation. 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$750.00 and Debtor is proposing a 0% dividend to unsecured creditors. Debtor is married and his spouse is not included in the bankruptcy. Debtor did not file a Spousal Waiver for use of the California State Exemptions under the California Code of Civil Procedure. Trustee's Objection to Exemptions is set for hearing on December 10, 2013.
5. At the First Meeting of Creditors, Debtor admitted that he did not file his tax return during the four-year period

preceding the filing of the petition. 11 U.S.C. §§ 1308 & 1325(a)(9). Debtor specifically admitted that 2012 was complete, but not filed as of the First Meeting. The IRS has not filed a claim and Debtor needs to prove this return was filed.

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 16, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the Motion to Dismiss to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtor is in material default with respect to the terms of the confirmed plan. Debtor did not provide for the priority claim of the State Board of Equalization in the amount of \$9,745.09. Section 3.18 of the Plan makes this a breach. Debtor was provided Notice of Filed Claims on February 21, 2012, which listed this claim as Claim 14 on page 10 as a priority and not provided for in the plan.

Debtors' Opposition

Debtors request the Motion to Dismiss be continued to allowed the claim of the Board of Equalization to be paid outside the plan and then withdrawn from this case.

The Board of Equalization's claim stems from a personal assessment of unpaid sales tax owing from a failed corporation named Bohmann and Frost, Inc. All the shares of Bohmann and Frost, Inc. were owned by either Debtor or Michael Bohmann. Mr. Bohmann is now a debtor in an active Chapter 7 case (13-204460) in which the Board of Equalization filed a priority tax claim in the amount of \$10,622.23 for a personal assessment of unpaid sales taxes stemming from Bohmann and Frost, Inc. In Mr. Bohmann's case, the Trustee filed a final report proposing to pay the Board of Equalization the amount of \$7,399.52 from estate funds.

Mr. Bohmann has promised Debtor that once the funds are disbursed from his case, he will immediately pay the remainder of the balance owing for any unpaid sales taxes stemming from Bohmann and Frost, Inc.

Discussion

Debtors' confirmed their plan on September 21, 2011. While Debtors' action is a breach of the plan, according to the term plans, the court is inclined to continue the matter to allow resolution of the priority claim outside the plan. This will allow Debtors to continue in their current plan of reorganization. If payment of the priority debt is not made outside the plan, Debtors should be prepared to present a modified plan and motion to confirm promptly to the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is continued to **[date]** at **[time]**.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The court continued Trustee's Motion to Dismiss to permit Debtor to submit supplemental information regarding student loan deferment. The Chapter 13 Trustee moved to Dismiss Debtors' Bankruptcy Case because Debtor was in material default with respect to the terms of the confirmed plan. Debtor's plan, section 5.03, stated that if the plan will not complete within 60 months, the Trustee may request appropriate relief. Based on Trustee's calculations, the plan will complete in 75 months as opposed to 60 months, exceeding the amount of time permitted under 11 U.S.C. § 1322(d). In a plan paying 100% to unsecured creditors, filed unsecured claims were \$16,474 greater than scheduled. Debtor has a pending student loan claim (Claim #9) not provided for that prevents the plan from completing within 60 months.

Debtors' Opposition

Debtor opposed Trustee's Motion to Dismiss. The student loan creditor at issue is ECMC. Prior to filing, Debtor elected to defer payments to ECMC and continued to defer payments after filing for bankruptcy. Schedule J is accurate and shows no monthly student loan payment allocated to ECMC. Debtor requests that the court amend the Order Confirming the plan previously filed on March 24, 2013 to include authorization for Debtor's deferment with student loan creditor, ECMC.

Discussion

At the first hearing on Trustee's Motion to Dismiss, the court permitted a continuance of the matter so Debtor could file with the court evidence of the student loan deferment. On October 21, 2013, Debtor filed a Supplemental Declaration and exhibits evidencing that her student loan is in deferment through December 16, 2013 (Exhibit B, Dkt. 81).

Based on the evidence presented, Debtor is in compliance with the plan terms up through December 16, 2013. If Debtor does not demonstrate evidence of further deferment, then the plan will still not complete within 60 months.

The decision of the court is to deny the Trustee's Motion to Dismiss and to further order Debtor to provide Trustee with evidence of continued deferment regarding the ECMC loan. Debtor is also welcome to propose a modified plan that incorporates payments to ECMC if the deferment period permanently terminates December 16, 2013.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is denied without prejudice.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Trustee's Motion to Dismiss was continued at the hearing held August 23, 2013 to permit time for the resolution of a pending Motion to Value.

The Trustee's Motion to Dismiss argued that Debtor's Motion to Confirm was heard and denied by the court at the hearing held on June 11, 2013 and that Debtor has not filed a subsequent plan or Motion to Confirm. This, Trustee argued, resulted in unreasonable delay prejudicing creditors. 11 U.S.C. § 1307(c).

Debtor's Response

Debtor responded to Trustee's Motion by stating that an amended plan was not filed because the plan relied on a Motion to Value. The Motion to Value was continued to permit negotiations between the parties and was eventually withdrawn by Debtor on September 23, 2013. Debtor and secured creditor Olympia Mortgage & Investment Company, Inc. have negotiated a loan modification.

Discussion

Trustee moved to dismiss because Debtor's delay in proposing a plan was causing prejudice to creditors. While Debtor has yet to propose a plan, Debtor has been working diligently with secured creditor Olympia Mortgage to resolve a valuation dispute and the parties entered into a loan modification agreement. On November 5, 2013, the court continued Debtor's Motion to Approve the Loan Modification because the exhibit containing the terms of the agreement was not properly uploaded to the court's docket.

At the last hearing, the court expressed concern about Debtor

adequately prosecuting this Chapter 13 case. The court is satisfied that Debtor is being diligent in the prosecution of this case despite the technical error uploading the loan modification agreement. Furthermore, it appears that on November 7, 2013, Debtor uploaded a copy of the agreement (Dkt. 111). The court will deny Trustee's Motion without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 15, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case on two grounds:

(1.) Debtors are delinquent \$261.00 in plan payments to Trustee to date, and the next scheduled payment of \$189.00 is due on October 25, 2013. The case was filed on June 8, 2012, and the Plan in \$1.01 calls for payments to be received by Trustee no later than the 25th day of each month, at the beginning of the month, after the order for relief under Chapter 13 was entered. Debtor has paid \$1,728.00 into the Plan to date.

(2.) The case was filed on June 8, 2012, and Debtor has to confirm a Plan. The Debtor's Motion to Confirm Amended Plan, SS-6, was heard and denied on September 17, 2013. Debtor has not filed an Amended Plan and set a confirmation hearing to date.

Debtors' Opposition

Debtors state that their delinquency will be cured by the time of the hearing on this motion. Debtors state that they "misunderstood" their actual plan payment amount because of the "number of times this very complicated and unique case has been changed." Debtors intend to cure their arrears by the time of this hearing.

Debtors further respond to Trustee's motion by stating their intention to file an Amended Plan and Motion to Confirm by the time of this hearing, explaining that Debtor husband recently lost his job and is seeking new employment (which will necessarily change the terms of the plan).

The court recognizes that Debtors intend to file an Amended Plan and cure their arrearage to the Trustee, and that Debtors have made three attempts to draft confirmable Plans in this past year. As it stands, however, no plan that is suitable for confirmation has been set forth. A review of the docket

shows that Debtors have not filed an Amended Plan since their Motion to Confirm their most recent Plan was denied on September 24, 2013. The Motion to Dismiss will be tentatively denied. In the event that Debtors do present an Amended Plan by this hearing date, the court will reconsider its decision and deny the Motion to Dismiss.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is not granted and the case is not dismissed.

19.	<u>13-31548</u> -C-13	ALICIA WHITNEY Richard L. Jare	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 10-8-13 [<u>37</u>]
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Final Ruling: The court issued an order to show cause based on Debtor not paying one installment according to the schedule specified in the court's Order approving payment of filing fees in four separate installments (Dckt. No. 6). The amount of \$70.00 due on October 3, 2013, was not paid. The court docket reflects that on October 15, 2013, the court received Debtor's payment. Debtor has also timely paid the second installment fee of \$70.00, which was due on November 4, 2013.

The fees having been paid, the Order to Show Cause is discharged. No appearance is required.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on October 16, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is in material default pursuant to §6.03 of the Plan, which provides that if "Debtor defaults under this plan, or if the plan will not be complete within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1."

According to Trustee's calculations, the Plan will complete in 794 months, as opposed to the proposed 60 months. This span of time exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The order confirming the Plan in August 31, 2012, stated that unsecured creditors are to receive 100%. In a plan with monthly payments of \$95.00, and unsecured claims that total \$69,985.90 and attorney fees of \$2,500, the Plan will not complete in the permitted amount of time. Debtor was provided with a Notice of Filed Claims on November 4, 2012 (Dckt. No. 46), which indicated that a motion to modify would be required.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

21. [13-31852](#)-C-13 FRED/EILEEN LIGHT ORDER TO SHOW CAUSE - FAILURE
Marc A. Caraska TO PAY FEES
10-15-13 [[16](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor not paying one of more installments according to the schedule specified in the Order granting Debtor leave to pay the filing and administrative fees in installments (Dckt. No. 6). The amount of \$70.00 due on October 10, 2013, has not been paid. The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 24, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case for the following reasons:

(1.) Debtor is \$148.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$148.00.00 is due on October 25, 2013. Debtor has paid \$0.00 into the plan to date.

(2.) Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven date before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

(4.) Debtor filed a plan on September 26, 2013; however, Debtor has not served all interested parties and has not filed a companion Motion to Confirm the Plan. Trustee objects to the Plan as to the following:

(a.) Section 2.07 states that \$0.00 will be paid as an administrative expense.

(b.) Section 6 is vague, in that it is not clear if Debtor has obtained a reverse mortgage; the lien to Wells Fargo is not Debtor's loan, and no plan payments will be made to Wells Fargo by either Trustee or Debtor for the first 3 months of the Plan. No information is provided as to who owns the property.

(c.) The Plan does not work mathematically, as it calls for 36 payments of \$148.00 per month or \$5,328. The Plan proposes to pay \$2,500 in attorney fees and 7% to unsecured creditors, estimated at \$5,029.92.

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

23.	<u>13-31357</u> -C-13	MICHAEL/LISA BABICH C. Anthony Hughes	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 10-3-13 [<u>21</u>]
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Final Ruling: The court issued an order to show cause based on Debtor not paying an installment according to the schedule specified in the court's Order approving payment of filing fees in four separate installments (Dckt. No. 6). The amount of \$70.00 due on September 30, 2013, was not paid. The court docket reflects that on October 7, 2013, the court received Debtor's payment. As stated on the Notice Concerning Fee Payment (Dkct. No. 23), Debtor paid a total of \$281,00, thereby completing all installment fee payments in this case.

The fees having been paid, the Order to Show Cause is discharged. No appearance is required.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss and not dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtor is in material default, as Debtor does not provide for the claim of the Franchise Tax Board (Court Claim #3, as amended by Claim #10), in the amount of \$12,295.01. §2.13 of the Plan renders this a breach of the Plan.

Debtors' Opposition

Debtors will amend their Plan to cure the defect. Debtors had unavailingly attempted to enter into a stipulation with the Franchise Tax Board to pay their claim outside of the bankruptcy. Prior to the filing of the Debtors' Chapter 13 case, Debtor's counsel had been waiting for evidence to support Debtors' claims that the tax debt was fully unsecured. Once the case was filed, the tax board claim was inadvertently forgotten because of Debtors' focus on the Internal Revenue Service claims and preparation of a stipulation to deal with the tax liability in the Plan.

Debtors state that the Tax Board Claim can be paid in full during the remainder of Debtors' plan period, if monthly payments for the plan would increase to approximately \$680.00 per month. This increase would be feasible for the duration of the Plan period.

It appears that Debtors are requesting that the court grant its proposed, third Amended Plan that it has attached as Exhibit "B" to the instant opposition, at this time. Pursuant to Local Rule 3015-1(d)(2), however, Debtors must file and serve their modified Chapter 13 plan together with a motion to confirm it. Debtors' Amended Plan and Motion to Confirm must be filed separately with the court, as Debtors and Trustee have not entered into a stipulation for the court to approve any nonmaterial modifications of the plan. Thus, the court cannot entertain a request to confirm an amended plan in its current form: embedded within an opposition to a motion to dismiss a case.

The court will, however, grant a short extension of time for Debtors

to file an amended plan and Motion to Confirm the amended plan that includes the Franchise Tax Board Claim.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied and the case is not dismissed.

IT IS FURTHER ORDERED that Debtors must file an amended plan and Motion to Confirm the amended plan by **[date]**.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 16, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that Debtor is in material default pursuant to § 5.03 of the Plan, which provides that if Debtor defaults under the plan, or the plan will not be completed within six months of its stated term, Trustee or other interested parties may request appropriate relief and set it for hearing.

Trustee's calculations reveal that the Plan will complete in 161 months, as opposed to the 45 months proposed. This time exceeds the amount of time allowed under 11 U.S.C. § 1322(d). Debtor appeared to intend to value the second deed of trust held by Old Republic Insurance Company (Court Claim #4) in the amount of \$34,744.46, but did not do so.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.

November 13, 2013 at 10:00 a.m.

26. [13-26065](#)-C-13 MARCO VAZQUEZ BAUTISTA MOTION TO DISMISS CASE
TSB-2 C. Anthony Hughes 10-16-13 [[66](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 16, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the hearing on the Motion to Dismiss to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case for the following reasons:

(1.) Debtor is delinquent in Plan payments to Trustee to date. The next scheduled payment of \$100.00 is due on October 25, 2013. Debtor has so far paid \$200.00 into the Plan.

(2.) There is no pending plan, as Trustee's Objection to Confirmation (TSB-1) was heard and sustained by this court at the hearing held on September 17, 2013 (Dckt. No. 65). Debtor has yet to file a subsequently amended plan or motion to confirm.

Debtors' Opposition

Debtors plan to file a Motion to Convert the case to Chapter 7, but request that the court grant Debtor additional time to gather the necessary documents to file a Motion to Convert.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is continued to **[date]** and **[time]** to allow Debtor to file a Motion to Convert this Chapter 13 case into a Chapter 7 case.

27.	13-23467-C-13	ANDRES DELGADILLO	MOTION TO DISMISS CASE
	NLE-1	Robert P. Huckaby	10-15-13 [86]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 15, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case for the following reasons:

1. Debtor is \$330.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$340.00 is due on September 25, 2013. Debtor has paid \$,710.00 into the plan to date.
2. Debtor's case was filed on March 14, 2013 and Debtor has yet to confirm a plan. A Motion to Confirm Debtor's Amended Plan was heard and denied on September 10, 2013, but nothing subsequent has been filed.

Debtor's Opposition

Debtor responds by stating that he filed a Second Amended Plan and believes that it resolves all appropriate objections made by Trustee.

Trustee's Response

Trustee responds to Debtor's opposition, asserting that Debtor is merely using the Trustee as a calendaring system and has not proposed a confirmable Second Amended Plan. Trustee argues the Second Amended Plan does not resolve his prior objection to confirmation that resulted in denial of Debtor's Motion to Confirm.

Discussion

Debtor's case was filed on March 14, 2013. Debtor's relevant filing history is as follows:

Action	Outcome	Opposition
First Plan filed 03/13/2013		Objection by Trustee overruled as moot (Dkt. 44).
Trustee Motion to Dismiss for Unreasonable Delay filed 6/28/2013	Withdrawn as Debtor filed First Amended	N/A
First Amended Plan filed 07/17/2013	Denied (Dkt. 85)	
Motion to Confirm First Amended Plan filed 07/17/2013	Denied	Trustee opposition for claims not provided for in the plan (Dkt. 77)
Trustee Motion to Dismiss for Unreasonable Delay filed 10/15/2013	Pending	Opposition filed by debtor
Second Amended Plan filed 10/30/2013	Pending	
Motion to Confirm Second Amended Plan filed 10/30/2013	Pending	

While Debtor has presented a Second Amended Plan and Motion to Confirm to the court, the court remains concerned as to whether Debtor is prosecuting this case in good faith. Trustee states that the Second Amended Plan is proposed with the same deficiencies previously resulting in denial of Debtor's Motion to Confirm. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 16, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on two grounds:

(1.) Debtor did not appear at the First Meeting of Creditors held on October 3, 2013. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The hearing has been continued to October 31, 2013, at 10:30 am.

(2.) Debtor is also \$200.00 delinquent in Plan payments to date, and the next schedule payment of \$200.00 is due on October 25, 2013. The case was filed on August 22, 2013, and the Plan calls for payments to be received by Trustee no later than the 25th day of each month, and the beginning of the month, after the order for Chapter 13 relief has been entered. Debtor has paid \$0 into the Plan to date.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and

good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.

29. 13-26783-C-13 CARLA JOHANSEN MOTION TO DISMISS CASE
TSB-3 Pro Se 10-16-13 [65]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (in pro se) and Office of the United States Trustee on October 16, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

Chapter 13 Trustee moves to dismiss Debtor's case because Debtor has not prosecuted the case, causing unreasonable delay that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1). Trustee's Objection to Confirmation (TSB-2) was heard and sustained on August 6, 2013. To date, Debtor has not filed an Amended Plan and set it for confirmation.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.

November 13, 2013 at 10:00 a.m.

Page 38 of 47

30. [13-31284](#)-C-13 PATTI BEGRIN
Thru #31 Harry D. Roth

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-2-13 [[23](#)]

Final Ruling: The court issued an order to show cause based on Debtor not paying an installment required by the schedule specified in the court's Order, approving payment of filing fees in four separate installments to be paid in the span of three months (Dckt. No. 7). The first payment in the amount of 70.00, due on 9/27/2013, had not been paid. The court docket reflects that on October 16, 2013, the court received Debtor's payment.

The fees having been paid, the Order to Show Cause is discharged. No appearance is required.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented
to the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Order to Show Cause is
discharged, no sanctions are ordered, and the
case shall proceed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 16, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on two grounds:

(1.) Debtor is \$1.00 delinquent in Plan payments to Trustee, and the next scheduled payment of 1.00 is due on October 25, 2013. Debtor is required to make payments of \$1.00 per month for 4 months, and \$79.00 per month for the 56 months of the Plan thereafter. \$1.01 of the Plan calls for payments to be received by Trustee no later than the 25th day of each month, and the beginning of the month, after the order for Chapter 13 relief has been entered. Debtor has paid \$0.00 in to the Plan to date.

(2.) It appears that Debtor cannot make the plan payments required under 11 U.S.C. § 1325(a)(6). The Plan payment required is \$1.00 for 4 months and \$79.00 for 56 months. Debtor's budget does not support the plan payment, as her Schedule J indicates a monthly net income of \$906.35.

(3.) Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven date before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

32.	13-23191 -C-13	ESHIARI BALAWAG AND	CONTINUED MOTION TO DISMISS
	TSB-2	ERLINDA MUTUC-BALAWAG	CASE
		Marc A. Carpenter	8-6-13 [49]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 6, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss and not dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This hearing was continued from September 4, 2013 to this hearing date, to give Debtors time to file an amended plan and Motion to Confirm the Amended Plan. The Trustee sought dismissal of the case on the basis that the Debtor was \$1,566.00 delinquent in plan payments. Not making plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argued that Debtors' Motion to Confirm was denied by the court at the hearing held on June 18, 2013, and that Debtors have not filed nor set confirmation for an amended plan. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtors' Response

Debtors objected to Trustee's Motion to Dismiss on the following grounds:

(1.) Debtors cured the delinquency and are current under the plan.

(2.) Debtor Mr. Balawag suffered a seizure in July 2013 which has hindered his ability to obtain employment and resulted in his driver's license being suspended pending further medical evaluation. Debtor wife does work and is caring for her husband while he is in recovery. Debtors requested an extension of time to assist their attorney in preparing and filing an amended plan.

The court recognized that Debtors cured their plan delinquency and granted an extension of time to file an amended plan and Motion to Confirm the amended plan, setting the deadline of this hearing date, November 13, 2013 to complete these actions. To date, however, no amended plan and Motion to Confirm has been filed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 30, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case because Debtors are causing unreasonable delay that is prejudicial to creditors. This case was filed on July 12, 2013, and Debtor has yet to confirm a Plan.

Trustee's Objection to Confirmation, TSB-1, and Creditor's Objection to Confirmation were both heard and sustained on September 17, 2013. No subsequent amended plan or Motion to Confirm has been filed to date. Unreasonable delay that is prejudicial to creditors is sufficient cause for dismissal pursuant to 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

[illegible]

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 24, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtor's bankruptcy case on the following grounds:

(1.) Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven date before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

(2.) Debtor's Chapter 13 documents are incomplete. Debtor's Plan itself is blank, and not signed or dated by Debtor. Schedules A through J are blank, and Debtor only filed the first page of her Statement of Financial Affairs. Moreover, Debtor did not list her prior cases on her Voluntary Petition (Cases #11-35491 and #11-40599).

(3.) Debtor did not provide verification of her Social Security Number at the First Meeting of Creditors, held on October 17, 2013.

(4.) Debtor is delinquent in plan payments to Trustee to date. The case was filed on August 26, 2013. \$1.01 of the Plan calls for payments to be received by Trustee no later than the 25th day of each month, and the beginning of the month, after the order for Chapter 13 relief has been entered. Debtor has paid \$0.00 in to the Plan to date.

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

36. [12-26098](#)-C-13 MONICA GRIMES-BURGER MOTION TO DISMISS CASE
TSB-1 Stephen M. Reynolds 10-16-13 [[23](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 16, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the following grounds:

(1.) It appears that Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$820.00 under the terms of the Plan confirmed on June 5, 2012. Payments totaling \$9,270.0 have become due, and Debtor has paid a total of \$8,450.00 to date, with the last payment posted on October 9, 2013.

(2.) Debtor is in material default pursuant to section 6.03 of the

plan, which requires Debtor to complete the plan within 60 months. Based on Trustee's calculations, the Plan will complete in 70 months as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 1322(d). The filed Class 5 claims in this case were \$4,920.41 greater than scheduled claims, and general unsecured claims to be paid 15% were \$20,318.85 greater than scheduled. Debtor was provided a Notice of Filed Claims on October 11, 2012 (Dckt. No. 19), which indicated that a motion to modify would be required if the Notice included allowed claims that will prevent the Plan from being completed in a timely manner.

Pursuant to 11 U.S.C. § 1307(c)(6), material default by a debtor with respect to a term of a confirmed plan is sufficient cause for the court to dismiss a case.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.